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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6329 OF 2001

Kamyani Vidya Mandir ... Petitioner

V/s

1. Mrs. Sangeeta Exknath Sanghpal
2. Shri P.S. Narkar,
   Presiding Officer,
   1st Labour Court, Pune. ... Respondents

Mr. Kiran S. Bapat for the petitioner.

Mr. S.A. Sawant for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 5TH SEPT., 2007.

ORAL JUDGMENT:

1. The petitioner challenges the award of the Labour Court dated 12.12.2000 by which the Labour Court has observed that the petitioner is an industry as defined under Section 2(j) of the Industrial Disputes Act, 1947. The Labour Court has also held that the respondent No.1 is a workman as defined under Section 2(s) of the Industrial Disputes Act. As these two issues were decided as preliminary issues, there is no finding recorded by the Labour Court on merits.

2. The petitioner claims to be an educational institute for mentally challenged children. It is funded by various business houses. According to the petitioner, its main object is to impart education to the mentally challenged and to rehabilitate them in order to enable them to lead independent lives as an integral part of society. The petitioner employed the respondent No.1 as a "Teacher" from 4.8.1992 on a temporary basis. After the temporary period was over on 3.2.1993, the petitioner appointed the 1st respondent again for a period of two months i.e. upto 30.4.1993 on a temporary basis. According to the petitioner, the services of the 1st respondent were not found to be satisfactory and, therefore, memos, warnings and a show cause notice, were issued to her for a several acts of misconduct including late attendance, absenteeism, etc. The services of the 1st respondent were terminated by letter dated 24.4.1993 as she was found unsuitable to continue in employment. Thus, the services of the 1st respondent came to an end on 1.5.1993.

3. Aggrieved by the decision of the petitioner, the 1st respondent raised an industrial dispute which was referred for adjudication before the Labour Court. It was registered as Reference (IDA) No. 251 of 1994. The 1st respondent filed statement of claim contending that

she was employed in an industry and that she was a workman as defined under Section 2(s) of the Industrial Disputes Act. The 1st respondent pleaded that although she was appointed as a Craft Teacher, she was expected to do any work which was allotted to her by the petitioner. She has pleaded in her statement of claim that she was required to do other work like typing, book binding, etc. herself, besides training to mentally challenged to do such jobs. The 1st respondent contend that her services have been terminated without an enquiry and, therefore, the action taken by the petitioner was illegal and unjustified.

4. In its written statement, the petitioner has contended that it is not an industry as defined under Section 2(j) of the Industrial Disputes Act. It has described the work that it undertakes in the following manner:-

> "In the first place, the first party submits that it is not an "Industry" as defined u/s 2(j) of the Industrial Disputes Act 1947. The first party submits that it is an organisation engaged in the upliftment of the mentally retarded children. It has its objection of giving education and rehabilitating the

> mentally retarded children with an intention that they should become independent on their own and should lead their life independently. The first party has not engaged in any commercial activity and it has no intent of commerce. The first party therefore is not an "Industry" under the Industrial Disputes Act and, therefore, the provisions of the Industrial Disputes Act are not applicable to it."

5. The petitioners have also pleaded that the respondent was a Teacher in the school run by the petitioners and, therefore, was not a "workman" as defined under Section 2(s) of the Industrial Disputes Act.

6. Evidence of both the parties was led before the Labour Court. In her examination-in-chief the 1st respondent has stated that, on her appointment as a Craft Teacher, she was also doing the work of making greeting cards, envelopes, candles, aprons and taking dictation, proof reading and tally the papers as per number normally at closing hours. She has also stated in the examination-in-chief that the articles prepared by the mentally challenged were sold through stalls set

up outside the premises during festive seasons and the sale proceeds were accepted by the petitioner. In her cross-examination, the respondent No.1 has admitted that such articles were produced while she was teaching the children. She has also admitted that no regular workers were engaged by the petitioner for the production of the aforesaid articles. She has also admitted that training was imparted to the mentally challenged children to rehabilitate them.

7. As against this, the Manager of the petitioner who has been examined, has stated that the petitioner is registered under the Government Trust Act and the Societies Registration Act. She has stated that the petitioner educates mentally challenged children without any profit motive. In the cross-examination she has admitted that at about 50 employees are working with the petitioner. She has also admitted that the Craft Course undertaken by the respondent was sufficient to qualify her for being appointed as a Teacher. She has then stated that several other articles like greeting cards, envelopes, bed-sheets, etc. are sold outside the premises by setting up a stall. She has categorically stated that there is no profit motive in selling the articles. These articles are produced, according to her, while training the mentally challenged.

8. The Labour Court, by its award has concluded that the petitioner is an "industry" since in the printing section orders from outside are secured, printing work for the Post Master General is also undertaken and several industrial enterprises also demand the products produced by the petitioner. The Labour Court held that there is no profit motive but systematic work was undertaken by the petitioner with the co-operation of its employees and, therefore, the petitioner was an industry.

9. As regards the second issue as to whether the respondent was a teacher, the Labour Court has concluded that the dominant nature of the work performed by the respondent No.1 is binding work, typing work and production of various items. The Labour Court has referred to the judgment in the case of **Miss A. Sunderambal v/s Government of Goa, Daman and Diu, reported in A.I.R. 1988 SC 1700** and has held that since the respondent No.1 was appointed as a Craft Teacher and she was doing the work of typing and binding besides helping the mentally challenged students to produce various articles, she was a workman within the meaning of Section 2(s) of the Industrial Disputes Act. The Labour Court observed that although the respondent was

designated as a Craft Teacher, her work was not essentially that of a Teacher in the academic field and "she was not exercising intellectual skill of a teacher", in order to impart instructions to students to build their scholastic career. In these circumstances, the Labour Court concluded that the respondent was a "workman".

10. While sitting in the writ jurisdiction of this Court, it would not be proper to consider the evidence led before the Labour Court and to reappreciate it. However, in the present case, it appears that conclusions drawn are not based on the evidence on record and, therefore, the findings of the Labour Court are perverse.

11. Before turning to the findings it would be appropriate to consider the judgment of the Supreme Court in the case of **Banglore Water Supply v/s A. Rajappa, reported in A.I.R. 1978 SC 548.** The Supreme Court has held:

> "Although S.2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-reach itself."

The Supreme Court in para 161 of the said judgment has noticed thus -

"161. "Industry", as defined in S.2(j) and explained in Banerji 9AIR 1953 SC 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operative between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual) or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or food) prima facie, there is an industry in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be "industry" provided the nature of the activity viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold "industry" undertakings, callings and services, adventures "analogous to the carrying on of trade or business". All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between

employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) Clubs, (iii) educational institutions, (iv) co-operatives, (v) reserch institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criteria, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt - not other generosity,

compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 sc 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 SC 675) will be the true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

Thus, the essential ingredient to decide whether an establishment is an industry is that, there must be systematic activity organised with the cooperation

between the employer and employee for the production and for distribution of goods. Although the organised activity may pass the triple test stipulated in the aforesaid para (a), the activity may not be a trade or business, it may still be "industry" provided the nature of the activity i.e. the employer-employee relationship basis, bears resemblance to what is found in trade or business. The Supreme Court has observed that, where a complex of activities, some of which qualify for as exceptions to the definitions, while others do not, the predominant nature of the services and the integrated nature of the departments must be considered. However, the Supreme Court has also observed thus:-

> "A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criteria, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit."

12. Considering the evidence on record in the present case, it is obvious that the Labour Court has erred in concluding that the petitioner is an "industry". In the present case, the dominant purpose for which employees are hired is to train the mentally challenged persons and to look after them. While imparting such training, goods are manufactured and later sold, without the

object of making a profit. The respondent No.1 has admitted that no regular employees are hired by the petitioner to produce the articles, such as, greeting cards, envelopes, candles, etc. She has also admitted that the articles which are sold in the stalls set up by the petitioner during the festive seasons are those which are made in the process of training the mentally challenged children. The articles are made by the children together with the teachers. There is no evidence on record to show that the mentally challenged persons who are being trained are paid any money for the products manufactured by them during the course of training. In these circumstances, it cannot be said that there is any employer-employee relationship between them and the petitioner nor can it be said that there is any systematic activity for the production of the goods. Therefore, the finding of the Labour Court that this the petitioner is an "industry" is erroneous and is therefore set aside.

13. The other finding of the Labour Court is that the respondent is a workman. This finding also is incorrect. Since it is held that the petitioner is not an "industry", a teacher who is working in such a establishment cannot be considered to be a "workman". Under Section 2(s) of the Industrial Disputes Act, a

workman means: "any person employed in any industry". As I have already held that the petitioner is not an industry, the respondent cannot be labelled as a 'workman'.

14. Rule made absolute.

15. No order as to costs.

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